

BY CM/ECF

October 16, 2020

Honorable John P. Cronan
United States District Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Securities and Exchange Commission v. Live Well Financial, Inc., et al.*
Case No. 19-cv-8086 (JPC) – Joint Status Letter

Your Honor:

In accordance with the Court's direction as set forth in the *Notice of Assignment* [ECF 33] entered on October 2, 2020 in the above-referenced civil action, the undersigned counsel respectfully submit this joint letter regarding the status of this case.

1. **Names/contact information of counsel** – All parties are represented by their respective counsel of record as reflected on the docket, but counsel of record for defendant Michael C. Hild, Murphy & McGonigle P.C., intends to submit an application for substitution of counsel pursuant to Local Rule 1.4 as soon as practicable.
2. **Brief Statement of the nature of this case** – Plaintiff Securities and Exchange Commission (the "Commission") commenced this civil action on August 29, 2019 against defendants (i) Live Well Financial, Inc. ("Live Well"), (ii) Hild, the founder and former chief executive of Live Well, (iii) Eric G. Rohr, the former chief financial officer of Live Well, and (iv) Darren Stumberger, the former portfolio manager and head of Live Well's bond trading using. In its complaint [ECF 1], the Commission alleges that the defendants inflated the values of certain bonds owned by Live Well serving as collateral for loans to obtain millions of dollars from Live Well's lenders and bond repurchase counterparties.

The Commission asserted five counts, including violations of Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77q(a)(1), (2), (3), against all defendants; violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5(a), (b), and (c), 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5(a), (b), (c), against all defendants; control person liability under Section 20(a) of the Securities Act, 15 U.S.C. § 78t(a), against defendant Hild; and aiding and abetting violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5(a), (b), and (c), against defendants Hild, Rohr, and Stumberger.

Defendants Rohr and Stumberger each have settled with the Commission, and judgments have been entered against defendants Rohr and Stumberger as to liability [ECF 19, 20]. The judgments provide, in relevant part, that upon motion of the Commission, the Court will determine whether it is appropriate to order disgorgement and/or civil penalties against either Rohr and/or Stumberger.

Defendant Hild is a defendant in a criminal action commenced by the United States and pending before the Honorable Ronnie Abrams of this Court. *United States of America v. Hild*, Case No. 19-cr-602 (RA) (S.D.N.Y.) (the “Criminal Action”).

The United States moved to intervene in and to stay this civil action and, on November 26, 2019, the Court entered an order [ECF 28] (the “Stay Order”) granting the motion to intervene and staying this case pending the outcome of the Criminal Action. The Court also adjourned *sine die* the initial pretrial conference [ECF 29].

Defendant Live Well is a debtor in a chapter 7 bankruptcy case pending before the United States Bankruptcy Court for the District of Delaware. *In re Live Well Financial, Inc.*, Case No. 19-11317 (LSS) (Bankr. D. Del.). David W. Carickhoff (the “Trustee”) was appointed and has duly qualified as the chapter 7 trustee of Live Well’s estate.

3. **Basis for jurisdiction** – The Commission has alleged that the Court has jurisdiction over this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.
4. **Existing deadlines** – By virtue of the Stay Order, all existing deadlines, due dates, and/or cut-off dates in this case have been stayed, pending the outcome of the Criminal Action.
5. **Previously scheduled conference dates** – The initial pretrial conference originally scheduled for January 17, 2020 was adjourned by the Court *sine die*. No other conferences or hearings were or have been scheduled at this time.
6. **Outstanding motions** – none.
7. **Pending appeals** – none.
8. **Discovery undertaken** – none.
9. **Prior settlement discussions** – Defendants Rohr and Stumberger each settled with the Commission, and judgments were entered against them on October 2, 2019 [ECF 19, 20].

The Commission and counsel to the Trustee, on behalf of Live Well, have had preliminary discussions regarding a potential resolution of this case with respect to Live Well.

The Commission and Hild have not engaged in settlement discussions since the action was filed.

10. **Alternative dispute resolution** – The parties have not discussed the use of any alternative dispute resolution mechanism at this time. The parties respectfully submit that any discussion or determination regarding ADR should be deferred until after the conclusion of the Criminal Action.
11. **Length of Trial** – The parties have not discussed the length or format of a trial at this time. The parties respectfully submit that any discussion or determination regarding the trial should be deferred until after the conclusion of the Criminal Action.
12. **Other information** – Trial in the Criminal Action against Hild currently is scheduled to begin on or about April 12, 2021. The parties respectfully request that this Court maintain the stay of this case pending the conclusion of the Criminal Action. The parties propose that a further status update be provided to this Court after the conclusion of the Criminal Action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed using this Court's CM/ECF notification service, which sent notification of such filing to all counsel of record October 16, 2020.

/s/ Robert K. Gordon

Robert K. Gordon